

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ITV DIRECT, INC.,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
HEALTHY SOLUTIONS, LLC,	)	
	)	
Defendants.	)	
	)	
CAPPSEALS, INC.,	)	
	)	
Plaintiff-in-Intervention	)	C. A. No. 04-CV10421-JLT
v.	)	
	)	
HEALTHY SOLUTIONS, LLC, d/b/a	)	
DIRECT BUSINESS CONCEPTS; ITV	)	
DIRECT, INC., AND DIRECT	)	
FULFILLMENT, LLC.,	)	
	)	
Intervenor-Defendants.	)	
	)	

**PLAINTIFF CAPPSEALS, INC.'S  
APPLICATION FOR SUPPLEMENTARY PROCESS HEARING**

Pursuant to Fed. R. Civ. P. 69 and M.G.L. c. 224, §§ 14-15, Plaintiff and judgment creditor Cappseals, Inc. (“Cappseals”) hereby respectfully submits an application to the Court to conduct a supplementary process hearing requiring Defendant and judgment debtor ITV Direct, Inc. (“ITV”) to appear and submit to an examination under oath relative to its property and ability to pay the unsatisfied judgment held by Cappseals.

Cappseals holds a judgment in the amount of \$1,041,684.49 (the “Judgment”) against defendant ITV, among others, based upon ITV’s failure to pay for six shipments of a health supplement called “Supreme Greens.” [Dkt. No. 140]. Despite Cappseals’ demands, ITV has

not satisfied the Judgment in whole or in part. Since this court granted the Judgment on August 3, 2005, Cappseals has discovered information suggesting that ITV may have property and the ability to pay some or all of the Judgment. According to its own website, available to the public at [www.itvdirect.com](http://www.itvdirect.com) (the “Website”), ITV currently operates a “multi-million dollar studio” that it uses to produce its infomercials.<sup>1</sup> The facility is the “largest infomercial production studio in America” and was opened in June of 2005.<sup>2</sup> ITV’s website also indicates that it promotes and sells the product it advertises, employing almost “300 hundred sales reps” at its “new 55,000 square foot ITV Direct World Headquarters in Beverly Massachusetts” which it is currently expanding.<sup>3</sup> As a result of its efforts, “the ITV customer base is exploding”<sup>4</sup> and **“brings in millions in sales annually.”**<sup>5</sup>

---

<sup>1</sup> The web page containing this statement is attached hereto as Exhibit 1 and is available at [http://www.itvdirect.com/itv\\_studios/](http://www.itvdirect.com/itv_studios/).

<sup>2</sup> The web page containing this statement is attached hereto as Exhibit 2 and is available at <http://www.itvdirect.com/corporate/history/>.

<sup>3</sup> The web page containing this statement is attached hereto as Exhibit 3 and is available at [http://www.itvdirect.com/itv\\_direct/sales\\_center/](http://www.itvdirect.com/itv_direct/sales_center/).

<sup>4</sup> The web page containing this statement is attached hereto as Exhibit 4 and is available at [http://www.itvdirect.com/corporate/executives/donald\\_barrett.asp](http://www.itvdirect.com/corporate/executives/donald_barrett.asp).

<sup>5</sup> The web page containing this statement is attached hereto as Exhibit 5 and is available at [http://www.itvdirect.com/news/latest\\_news/200603.asp](http://www.itvdirect.com/news/latest_news/200603.asp). Collectively, the statements from the Website contradict the representations that ITV made in the Opposition to Cappseals’ request for summary judgment (“Opposition”) in a related proceeding titled *Cappseals, Inc. v. Direct Marketing Concepts, Inc.*, C. A. No. 05-11907-JLT. [Dkt. No. 15]. In particular, ITV claimed that “the forecast was for ITV to begin generating profit at some point several months after the commencement of the advertising. That never happened.” Opposition, pg. 7. Additionally, in response to Cappseals’ argument that ITV ceased all business activity after the Judgment was issued, ITV simply pointed the finger at the Federal Trade Commission (“FTC”), arguing that “given the conflict and ongoing litigation with the FTC, it is in [no] way unusual that ITV’s business activities were substantially reduced.” Opposition, pg. 17.

## DISCUSSION

Federal Rule of Civil Procedure 69 provides in relevant part that:

...The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution **shall be in accordance with the practice and procedure of the state in which the district court is held**, existing at the time the remedy is sought... (emphasis added).

Fed R. Civ. P. 69(a). Rule 69 thus authorizes the use of state law procedural remedies in supplementary federal court proceedings to aid a judgment creditor in enforcing a federal court judgment. Pursuant to the Massachusetts Rules of Civil Procedure, “[t]he procedure on execution, in proceedings on and in aid of execution shall be in accordance with applicable **statutes.**” Mass. R. Civ. P. 69 (emphasis added).

Under Massachusetts statute, a judgment creditor “may file in court an application for supplementary process.” *See* M.G.L. c. 224, § 14. The purpose of the supplementary process statute “is to provide a searching inquiry into the ability of the judgment debtor to pay his legal obligation.” *Aetna Cas. & Sur. Co. v. Rodco Autobody*, 965 F. Supp. 104, 107 (D. Mass. 1996) (internal quotes and citations omitted).

At the supplementary process hearing, “the judgment debtor, if appearing, shall be examined on oath as to his or its property and ability to pay [and]...if the debtor is a corporation the person examined shall be its president, treasurer, cashier or other officer or agent in charge of the payment of debts...” M.G.L. c. 224, § 15. If after the hearing the Court finds that the debtor has property that can be taken on execution, the Court may require it to produce the property or transfer, assign or convey it to the judgment creditor. *See* M.G.L. c. 224, § 16. Alternatively, if the Court “finds that the debtor is able to pay the judgment in full or by partial payments, the court may order the debtor to pay the judgment, with interest ...and with costs of execution and

costs of the proceedings or in aid of judgment or execution in full or by partial payments from time to time...”. *Id.*

As evidenced by ITV’s admissions on the Website, it operates a highly profitable business with hundreds of employees working in a multimillion dollar state of the art facility including a multimillion dollar production studio. Accordingly, ITV may have property and the ability to pay the Judgment that warrants further inquiry at a supplementary process hearing.

### **CONCLUSION**

WHEREFORE, Cappseals’ hereby respectfully submits this application to the Court to issue an order requiring a representative or representatives of Defendant and judgment debtor ITV to appear and “submit to an examination relative to...its property and ability to pay” the unsatisfied Judgment held by Cappseals.

CAPPSEALS, INC.

By its attorneys,

/s/ Peter Antonelli

Daniel J. Kelly, BBO # 553926

[dkelly@mccarter.com](mailto:dkelly@mccarter.com)

Scott A. Silverman, BBO # 638087

[ssilverman@mccarter.com](mailto:ssilverman@mccarter.com)

Peter Antonelli, BBO # 661526

[pantonelli@mccarter.com](mailto:pantonelli@mccarter.com)

McCarter & English, LLP

225 Franklin Street

Boston, MA 02110

(617) 345-7000

August 3, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that true and accurate copies of the foregoing Cappseals, Inc.'s Application for Supplementary Process Hearing was served on the foregoing attorneys of record pursuant to Fed. R. Civ. P. 5 as follows:

Via electronic notification:

Peter S. Brooks      [pbrooks@seyfarth.com](mailto:pbrooks@seyfarth.com)

Susan W. Gelwick      [sgelwick@seyfarth.com](mailto:sgelwick@seyfarth.com)

Christopher F. Robertson      [crobertson@seyfarth.com](mailto:crobertson@seyfarth.com)

Becky Christensen      [bvc@ocmiplaw.com](mailto:bvc@ocmiplaw.com)

/s/ Peter Antonelli

Daniel J. Kelly BBO# 553926

[dkelly@ghlaw.com](mailto:dkelly@ghlaw.com)

Scott A. Silverman, BBO #638087

[ssilverman@ghlaw.com](mailto:ssilverman@ghlaw.com)

Gadsby Hannah LLP

225 Franklin Street

Boston, MA 02110

(617) 345-7000

DATED: August 3, 2006